



COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent to Revise Collection

Number 3038-0088: Swap Documentation

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (“CFTC” or “Commission”) is announcing an opportunity for public comment on the proposed revisions to the collection of certain information by the agency. Under the Paperwork Reduction Act (“PRA”), Federal agencies are required to publish notice in the *Federal Register* concerning each proposed collection of information, including each proposed revision of an existing collection of information, and to allow 60 days for public comment. This notice solicits comments on certain collections of information mandated by subpart I of part 23 of the Commission’s Regulations (Swap Documentation).

DATES: Comments must be submitted on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by “Swap Documentation,” and Collection Number 3038-0088 by any of the following methods:

- The Agency’s website, at <https://comments.cftc.gov/>. Follow the instructions for submitting comments through the website.
- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as “Mail” above.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to <https://www.cftc.gov>.

FOR FURTHER INFORMATION CONTACT: Dina Moussa, Attorney Advisor, Market Participants Division, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, at (202) 418-5696 or dmoussa@cftc.gov.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (“OMB”) for each collection of information they conduct or sponsor. “Collection of Information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the *Federal Register* concerning each proposed collection of information, including revisions to an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed revision to an existing collection of information.¹

Title: Swap Documentation (OMB Control No. 3038-0088).² This is a request to revise a currently approved information collection.

¹ An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number, 44 U.S.C. 3512, 5 CFR 1320.5(b)(2)(i) and 1320.8 (b)(3)(vi).

² The collections of information under OMB control numbers 3038-0068, 3038-0083, and 3038-0088 are now consolidated under OMB control number 3038-0088, and OMB control numbers 3038-0068 and 3038-0083 have been withdrawn as of July 5, 2022. Concurrently with this change, the Commission has changed the name associated with OMB control number 3038-0088 to “Swap Documentation”.

Abstract: On September 11, 2012, the Commission adopted Commission Regulations 23.500—23.505³ under sections 4s(f), (g) and (i)⁴ of the Commodity Exchange Act (“CEA”). Commission Regulations 23.500—23.505 require, among other things, that swap dealers (“SDs”)⁵ and major swap participants (“MSPs”)⁶ develop and retain written swap trading relationship documentation. The Regulations also establish requirements for SDs and MSPs regarding swap confirmation, portfolio reconciliation, and portfolio compression. Under the Regulations, SDs and MSPs are obligated to maintain records of the policies and procedures required by the rules.⁷

Confirmation, portfolio reconciliation, and portfolio compression are important post-trade processing mechanisms for reducing risk and improving operational efficiency. The information collection obligations imposed by the Regulations are necessary to ensure that each SD and MSP maintains the required records of their business activities and an audit trail sufficient to conduct comprehensive and accurate trade reconstruction. The information collections contained in the Regulations are also essential to ensuring that SDs and MSPs document their swaps, reconcile their swap portfolios to resolve discrepancies and disputes, and wholly or partially terminate some or all of their outstanding swaps through regular portfolio compression exercises. These collections of information are mandatory.

In this particular instance, the Commission is revising its aggregate burden for this information collection by removing the burden hour estimate on cleared swap recordkeeping, as this subcategory was proposed but not finalized by the Commission

³ 17 CFR 23.500—23.505.

⁴ 7 U.S.C. 6s(f), (g) & (i).

⁵ For the definition of SD, *see* Section 1a(49) of the CEA and Commission Regulation 1.3; 7 U.S.C. 1a(49) and 17 CFR 1.3.

⁶ For the definitions of MSP, *see* Section 1a(33) of the CEA and Commission Regulation 1.3; 7 U.S.C. 1a(33) and 17 CFR 1.3.

⁷ SDs and MSPs are required to maintain all records of policies and procedures in accordance with Commission Regulations 23.203 and, by extension, 1.31, including policies, procedures, and models used for eligible master netting agreements and custody agreements that prohibit custodian of margin from re-hypothecating, repledging, reusing, or otherwise transferring the funds held by the custodian. *See* 17 CFR 1.31 and 23.203.

and its burden estimate had been included erroneously under this information collection in previous renewals.⁸ Additionally, in light of the increased number of Commission-registered SDs and MSPs, the total number of respondents (combined SDs and MSPs) is being increased to 108. The overall burden hours for each remaining category within the information collection have increased proportionally, to reflect the increase in the number of respondents.

With respect to the collections of information, the CFTC invites comments on:

- Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burdens of the proposed collections of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burdens of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from

⁸ See 77 FR 55903 (Sept. 11, 2012) (The Commission has considered the commenters' recommendation to delete the clearing record provisions of § 23.504(b)(6)(iii) and (iv) and agrees that there is no need to include in the trading documentation a record of the names of the clearing members for the SD, MSP, or counterparty. Once a swap is accepted for clearing, the identity of a counterparty's clearing member is no longer relevant and requiring such a record has the possibility to undermine the anonymity of central clearing. Therefore, those provisions have been deleted from the final rule. Similarly, § 23.504(b)(6)(i) and (ii) have been removed because those records will be captured under the SD and MSP recordkeeping requirement, § 23.201(a)(3), and the Commission believes those records are sufficient.).

disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.⁹

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from <http://www.cftc.gov> that it may deem to be inappropriate for publication, for reasons such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the information collection request will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

Burden Statement:. Based on the proposed revisions to the estimated aggregate burden as discussed above, the respondent burden for the collection is estimated to be as follows:

- **OMB Control No. 3038-0088 (Swap Documentation)**

Number of Registrants: 108.

Estimated Average Burden Hours Per Registrant: 7,324.5.

Estimated Aggregate Burden Hours: 791,046.

Frequency of Recordkeeping: As applicable.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: August 15, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

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⁹ 17 CFR 145.9.